



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 175127

PRELIMINARY RECITALS

Pursuant to a petition filed on June 20, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on July 11, 2016, by telephone.

The issue for determination is whether the department correctly denied the petitioner's request for medical assistance reimbursement for Child/Adolescent Day Treatment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Douglas County.

2. On May 11, 2016, the petitioner with Northwest Journey—Northern Lights requested 13 weeks of Child/Adolescent Day Treatment (CADT) beginning on May 13, 2016, at a cost of \$26,000.
3. The petitioner was last examined by a psychiatrist or psychologist in March 2015. That examination uncovered strong evidence that the petitioner’s psychological problems were caused by a pervasive development disorder. No further testing ruling out a pervasive development disorder have been completed since then despite a suggestion from the petitioner’s psychiatrist that this testing be done.

DISCUSSION

This is the second of two requests for Child/Adolescent Day Treatment services (CADT) being litigated simultaneously by the petitioner. This one is for services that began on May 13, 2016.

The department considers CADT a “HealthCheck—Other Service” covered under Wis. Admin. Code, § DHS 107.22(4). It is a catch-all category applying to any service described in the definition of “medical assistance” found at 42 USC 1396d(a). CADT guidelines refer to Wis. Admin. Code, Chapter DHS 40, which specifically covers for children under 18, so those provisions are relevant in determining whether to approve the services. They require an initial assessment that includes an evaluation of the recipient’s “mental health status by a psychiatrist or a clinical psychologist and the clinical coordinator of the program.” Wis. Admin. Code, § DHS 40.09(2)(c). This is followed by a treatment plan approved by the program. Wis. Admin. Code, § DHS 40.10. Like any medical assistance service, it must be medically necessary, cost-effective, and an effective and appropriate use of available services. It must also meet the “limitations imposed by pertinent...state...interpretations.” Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code.

Treatment for pervasive development disorders is considered an habilitative as opposed a rehabilitative service and is not covered under 42 USC §1396d(a)(13). I note however, that this section does not specifically bar medical assistance payment for habilitative services; rather it states that medical assistance does cover the following services, which include rehabilitation services:

other diagnostic, screening, preventive, and *rehabilitative* services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

Because the statute specifically indicates that rehabilitative services (including those needed for the reduction of a mental disability) are covered, mental health services are covered if the primary component is rehabilitative, even if it includes a habilitative component. This means that funding for the petitioner’s CADT depends upon the primary cause of his mental health problems. He has the burden of proving by the preponderance of the credible evidence that he meets the program’s criteria, including that the requested services is rehabilitative.

The petitioner is a seven-year-old boy who has displayed poor conduct and self-control at school and home. He began receiving CADT in February and his provider, Northwest Journey—Northern Lights, contends that he will require it until November. The request indicates that he has a generalized anxiety disorder and an adjustment disorder with mixed disturbance of emotions and conduct. This is based upon what appears to be a review of his records, conversations with his caregivers, and “observations from the intake process.” These are found in Northwest Journey’s Mental Status Evaluation and Diagnostic

Impressions. *Exhibit 1.* That report contains primarily conclusions with few facts supporting those conclusions. It does not appear that the petitioner was actually examined at that time.

The most recent examination of the petitioner documented in his request was performed by Dr. [REDACTED], a psychiatrist, in March 2015, or about a year before he began receiving services. Her report, which was thorough, found a good deal of evidence that he was on the autism spectrum and that this affected his behavior. Autism is a pervasive development disorder. She suggested further testing for autism. Northwest Journey acknowledged this in its mental status evaluation but has not followed through with the suggestion. Northwest Journey obviously relied on Dr. [REDACTED]'s report because it is included in its own Master Treatment Plan. *Exhibit 2.* Dr. [REDACTED]'s report noted some anxiety, but devoted more discussion to an "Autism Spectrum Disorder." She went on to suggest several autism programs and support groups that the petitioner might benefit from.

As noted, the petitioner has the burden of proving that the requested CADT services are necessary, and this requires that he demonstrate that these are rehabilitative rather than habilitative services. Yet, as far as I can tell, although autism was among Dr. [REDACTED]'s primary concerns, he has neither participated in any of the programs nor had any of the follow-up evaluations she recommends. CADT is expensive: The current request for three months of service costs \$26,000, and Northwest Journey believes he will need another three months besides the three months he requested earlier.

Medical assistance regulations require that to be considered medically necessary, a service must be consistent with treatment of the recipient's disability, not medically contraindicated with regard to his diagnoses, of proven medical value and usefulness, and cost-effective compared to an alternative medically necessary service reasonably accessible to him. Wis. Admin. Code, § DHS 101.03(96m)(b). Until the petitioner and those helping him follow through on Dr. [REDACTED]'s suggestions, there is no way to determine if CADT is a useful and cost effective treatment. Nor is it possible to determine whether it meets the requirement that it is a rehabilitative service.

Finally, it is relevant that Dr. [REDACTED] made more than a dozen recommendations in her report and not one of them involved CADT. I am aware that circumstances change in year, but the petitioner has had no comprehensive mental health examination by a psychologist or psychiatrist since her examination. Based on all the evidence before me, I find that the petitioner has not proved by the preponderance of the credible evidence that he is entitled to this service.

CONCLUSIONS OF LAW

The petitioner has not proved by preponderance of the credible evidence that the requested Child/Adolescent Day Treatment is a rehabilitative service or that it is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of August, 2016

\s _____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 11, 2016.

Division of Health Care Access and Accountability